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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement*/ submitted by the Norwegian Refugee Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE. *200101200*

ENG

A. REPUBLIC OF CROATIA

1. Organized return procedures arbitrarily deprive refugees of right to enter their own country. Under the organized return procedures, the Republic of Croatia through policy and individual decision deprives pre-conflict residents who are currently refugees in Serbia of the right to enter/return to their country through the imposition of arbitrary conditions, including current permanent residence in Croatia, Croatian citizenship, and accommodation. Citing the lack of current permanent residence, the Ministry for Public Works, Reconstruction and Construction together with the Ministry of the Interior denies the administrative applications for return submitted by refugees who possess Croatian citizenship documents as well as those who satisfy all conditions thereof but lack documents. The arbitrary nature of this condition for entry is made evident by Ministry of the Interior instructions issued in April 2000, which provide that for those persons who have lost their permanent residence, it can only be restored after return to Croatia.

Croatia also denies entrance to refugees who were pre-war residents but are now deemed to be foreigners under the Law on Croatian Citizenship, which includes a five-year residence requirement applicable only to non-ethnic Croats. Croatia also denies entrance to refugees who lack a place to live, including the owners of property occupied pursuant to government allocation and those who have lost occupancy rights pursuant to laws enacted and judicial verdicts entered during and after the armed conflict. The imposition of permanent residence, citizenship, and accommodation as conditions on refugees entering their own country violates the guarantee of Article 12, paragraph 4 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR") that no one can be arbitrarily deprived of the right to enter his or her own country. All refugees should be permitted to enter Croatia, regardless of citizenship or current permanent residence, upon establishment of refugee status or 1991 residence.

2. Croatian Return Program – a) arbitrary deprivation of property and interference with home; b) denial of right to fair hearing and right to effective remedy; c) denial of equality before the law. The Croatian Program for the Return and Accommodation of Displaced Persons, Refugees, and Resettled Persons (hereinafter "Return Program") and the Amendments to the Law on Areas of Special State Concern (hereinafter "Amendments") allow occupants allocated private property by the government (including persons who are neither displaced nor refugees) to indefinitely defeat the owner's right to re-possess his or her property. Re-possession is conditioned upon government provision of alternative accommodation to the occupant. However, there is no time limit within which such accommodation must be provided. The alternative accommodation requirement unlimited by time or actual housing need results in an arbitrary deprivation of property in violation of Article 17, paragraph 2 of the Universal Declaration of Human Rights (hereinafter "UDHR") and arbitrary interference with one's home in violation of Article 17, ICCPR. Croatia should adopt a repossession scheme that upholds the right of ownership.

Under the Return Program, Croatia has eliminated the property owner's right to a judicial remedy for the government-authorized occupation of his or her property and delegated that right to an administrative body, the local Housing Commission. This procedure denies the right to a fair hearing guaranteed by Article 14, ICCPR as well as

that to an effective remedy guaranteed by Article 8, UDHR. Croatia should re-establish the owner's right to a judicial remedy for repossession of private property.

Croatia's property repossession mechanism is limited to citizens; refugees and internally displaced persons who have been unable to regulate their citizenship status are not permitted to use the repossession scheme. Similarly, non-citizen, non-resident property owners are not permitted to use the repossession scheme. The owners' original entitlement to the property was not predicated on citizenship. The limitation of property restitution to those with Croatian citizenship violates the principle of equality before the law enshrined in Article 26, ICCPR and conflicts with the decision of the Human Rights Committee in Simunek, Tuzilova and Prochazka v. Czech Republic. Croatia's repossession mechanism should be open to all owners, including non-citizen, non-resident owners.

Unlike Bosnia and Herzegovina and Kosovo, Croatia has not restituted occupancy rights that were eliminated by the 1995 Law on the Lease of Flats in the Liberated Territories or *in absentia* court decisions issued under the Law on Housing Relations during and following the armed conflict. This results in an arbitrary deprivation of property in violation of Article 17, paragraph 2, UDHR and arbitrary interference with one's home in violation of Article 17, ICCPR. Both the law, which terminated occupancy rights within 90 days of enactment without the right of appeal, and the court decisions entered without the occupancy right holder's knowledge and participation denied the right holder of the fair hearing guaranteed under Article 14, ICCPR and the effective remedy guaranteed by Article 8, UDHR.

Both the law and court decisions terminating occupancy rights were applied disproportionately to terminate the rights of ethnic Serbs who left their homes during the period of armed conflict, resulting in discrimination contrary to Article 26, ICCPR. The Return Program continues the effects of the law and judicial decisions, thus constituting a continuing violation of Article 26, ICCPR. Croatia should restitute or compensate stripped occupancy rights, the failure to do so preventing any significant return of the Serb minority to urban areas.

B. FEDERAL REPUBLIC OF YUGOSLAVIA EXCLUDING KOSOVO

1. Violation of freedom of movement of internally displaced persons. Internally displaced persons from Kosovo who have moved to Serbia proper are not permitted by local police authorities to change their permanent residence from Kosovo to Serbia proper. Such a refusal by local police violates the right of these internally displaced persons to freely move within their own state and to choose their place of residence in violation of Article 12, paragraph 1, ICCPR and well as Principle 14, GPID. Further, the refusal of police authorities to issue new identity documents with permanent residence in Serbia proper disadvantages internally displaced persons in the enjoyment and exercise of their legal rights, including employment and education, in violation of Principle 20, GPID. Serbia should issue all necessary documents to IDPs from Kosovo.

2. **Denial of equality before the law.** Yugoslavia prohibits by law the transfer of real property located in Kosovo. This prohibition of land transfers in one part of the country discriminates against property owners solely on the basis of the location of

their property in violation of Article 26, ICCPR. It also effectively denies freedom of movement and denies resettlement of internally displaced persons in another part of the country in violation of Article 12, paragraph 1, ICCPR and Articles 14 and 28, GPID. Serbia should repeal the legal prohibition of land transfers in Kosovo.

C. KOSOVO

1. **Denial of right to fair hearing and right to effective remedy.** More than one and one-half years into the UNMIK administration, civil remedies remain virtually non-existent and there is no forum where the lack of such remedies could be challenged. Through UNMIK Regulation No. 2000/47, UNMIK has removed jurisdiction from the local courts over claims against the United Nations administration and KFOR, vesting jurisdiction for such claims in as yet non-existent claims commissions. Persons injured by these quasi-governmental actors have no legal recourse in violation of the right to fair trial guaranteed by Article 14, ICCPR and the right to an effective remedy guaranteed by Article 8, UDHR. Mechanisms must be developed immediately whereby persons with legal claims against UNMIK and KFOR have access to fair trial and effective remedy rights.

UNMIK has also removed jurisdiction for property repossession from the local courts, vesting jurisdiction in the Housing and Property Directorate. While this body has begun to receive claims, more than one year after it acquired jurisdiction it has not yet begun to issue decisions restituting possession of occupancy rights and private property, suffering from a chronic lack of funding and resources. To the extent that property right holders, both inside and outside of Kosovo, continue to lack access to a property restitution procedure, their right to a fair hearing and effective remedy is denied. UNMIK must ensure that the Housing and Property Directorate receives the necessary financial resources to extend the property restitution mechanism to claimants inside Kosovo as well as internally displaced persons in Serbia proper.

2. **Requirement that Internally Displaced Persons Return to Kosovo to Obtain UNMIK Identity Documents.** Only persons physically present in Kosovo are included in the civil register and receive UNMIK identity documents. The requirement that persons who are internally displaced in Serbia outside Kosovo return and "re-establish" themselves in Kosovo in order to obtain UNMIK identity documents may hinder this population in the exercise of rights in Kosovo. Consistent with Principle 20, GPID, UNMIK should permit persons displaced from Kosovo to obtain UNMIK identity documents.